

September 6, 2007

Jeffrey S. Landers
County Attorney
520 Lomas Blvd., NW - 4th floor
Albuquerque, New Mexico 87102

RE: Inspection of Public Records Complaint - Ched MacQuigg

Dear Mr. Landers:

Thank you for responding to our request for information regarding the complaint Mr. Ched MacQuigg filed with our office, alleging that the Bernalillo County Sheriff's Office ("BCSO") failed to respond to his requests under the Inspection of Public Records Act ("IPRA" or "Act"), NMSA 1978, §§ 14-2-1 through 14-2-12 (1947, as amended through 2005). We have reviewed Mr. MacQuigg's complaint, your June 26, 2007 response letter to this office, and the IPRA. For the reasons discussed below, it appears that BCSO violated IPRA, as alleged in the complaint.

Mr. MacQuigg e-mailed BCSO three inspection requests under the IPRA. The e-mails dated April 24, 26 and May 3, 2007 were all addressed to the: Custodian of Public Records, Bernalillo County Sheriff's Department, c/o Sheriff Darren White. The last sentence of the April 24 e-mail asked Sheriff White to forward the request to the proper custodian of records. Instead, Sheriff White replied to the April e-mails; the May 3 e-mail remained unanswered.

Sheriff White, who is not the custodian of records at BCSO, responded to the first two e-mails. These responses may have led Mr. MacQuigg to believe that the Sheriff was the appropriate person to receive requests under the IPRA. To avoid confusion, the proper procedure would have been for Sheriff White to forward the e-mail request to the custodian of records at BCSO for a response. An attempt at directing Mr. MacQuigg to the proper custodian was made in Sheriff White's April 26 reply. IPRA states in Section 14-2-8(D):

A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under

under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

Although Sheriff White timely responded to the April requests, neither he nor anybody else from BCSO responded to Mr. MacQuigg's May 3 request. Your response details all the problems you perceive with the May 3 inspection request. However, those problems, even if they exist, do not excuse BCSO from complying with the IPRA's deadlines for responding to inspection requests. In particular, it appears that a three-business day letter was not sent to Mr. MacQuigg, nor was the inspection allowed within fifteen days as required by Section 14-2-8(D). If BCSO requires more specific information about the records Mr. MacQuigg requested in order to properly respond, it should direct that inquiry to Mr. MacQuigg. Similarly, any legitimate reasons BCSO may have for keeping the requested records confidential should be included in BCSO's response to Mr. MacQuigg's inspection request.

To correct BCSO's violation of the IPRA discussed above, please send a response as soon as possible to Mr. MacQuigg that, as required by the IPRA, denies or allows his May 3 request to inspect BCSO records. Please provide us with a copy of your response to Mr. MacQuigg by October 15, 2007.

Sincerely yours,

Mona Valicenti
Assistant Attorney General

cc. Albert J. Lama, Chief Deputy Attorney General
Elizabeth Glenn, Assistant Attorney General, Director Civil Division
Mr. Ched MacQuigg
Sheriff Darren White